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FISCAL IMPACT REPORT

SPONSOR Cervantes **ORIGINAL DATE** 02/11/21
LAST UPDATED 02/19/21 **HB** _____
SHORT TITLE Threatening a Public Official Crime **SB** 182/aHPAC
ANALYST Eckberg

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB142

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Department of Public Safety (DPS)
 New Mexico Attorney General (NMAG)
 Corrections Department (NMCD)
 New Mexico Sentencing Commission (NMSC)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill of HPAC Amendment

The Health and Public Affairs Committee amendment to Senate Bill 182 inserts the word “bodily” on page 1, line 22, after the word “actual.” The bill now reads Section 1(A)(1) “No person shall threaten a public official with the intent to cause actual *bodily* harm to the public official”.

Synopsis of Original Bill

Senate Bill 182 amends Section 30-20-13 NMSA 1978 to add threatening a public official as a petty misdemeanor.

The amended statute would penalize any threat to a public official made with the intent to (1) cause actual harm to the public official, (2) place the public official in fear of great bodily harm, or (3) prevent or interrupt the ability to carry out the public official's job duties.

Public official means a person elected to an office of the executive or legislative branch of the state, a person elected or appointed to an office in a political subdivision of the state, a person appointed to a public agency, a judge or a Supreme Court justice.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

Public Defender Department (PDD) notes the creation of any new crime is likely to create new prosecutions and additional clients for them. The increase in prosecutions would increase PDD's overall workload, as well as the workloads of the courts and district attorneys.

Administrative Office of the Courts (AOC) indicates there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. AOC also notes additional resources to handle increases caused by new laws, amendments to existing laws, and new hearings may be necessary.

The bill does not include an appropriation.

SIGNIFICANT ISSUES

The New Mexico Sentencing Commission notes Rhode Island, Florida, New Hampshire, and Washington categorize threatening a public official as a felony with more severe sanctions than proposed in SB182. Maryland's similar law is categorized as a misdemeanor, and Colorado is presently considering a two to six year potential sentence for such a crime.

TECHNICAL ISSUES

Public Defender Department notes the language of SB182 is vague with respect to the provision that no person shall threaten a public official with the intent to *(3) prevent or interrupt the ability to carry out the public official's job duties*. The provision does not define what conduct would be considered "prevention" or "interruption", and may be interpreted to include unintended conduct which could result in challenges to charges and convictions under this statute.

Department of Public Safety (DPS) also raises concerns about the vagueness of the bill. DPS notes vagueness in respect to "actual harm" and the absence of any standard to determine whether the public official's apprehension of threat infringes on First Amendment statements as opposed to criminal harm, could lead to problems with justifying citation and prosecution.

PDD also notes the proposed language includes no requirement of imminence nor a person's *reasonable* fear, meaning a threat to hurt someone, for example in 10 years, would be in violation even if no reasonable public official would actually fear harm from such a threat.

AOC indicates the language of the bill does not provide a definition of acts that may be considered threats, while other states define a threat as verbal or written communication, and in

some instances, specifies direct or indirect communications. This type of clarification may aid law enforcement, judicial officers, and the general public in identifying acts that would constitute a violation.

ALTERNATIVES

DPS suggests a statute similar to the crime of threatening public officials; human service providers 720 ILCS 5/12-9 (effective January 1, 2018), in the state of Illinois.

According to DPS:

The Illinois statute focuses less on the subjective intent of the person making the threat and more on the objective content of the threat and the “reasonable apprehension of” the person to whom the threat is made of bodily harm, sexual assault, confinement, restraint, property damage, etc. The Illinois statute also makes it a crime to issue such a threat to a law enforcement officer or the Illinois equivalent of a Children, Youth and Families Department child protective services worker and the immediate family (spouse and children) of the same.

PERFORMANCE IMPLICATIONS

AOC notes the courts are participating in performance-based budgeting and SB182 may have an impact on the measures of the magistrate, metropolitan, and district courts in the following areas:

- Cases disposed of as a percent of cases filed.
- Percent change in case filings by case type.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Administrative Office of the District Attorneys indicates if SB182 not enacted this crime will continue to be prosecuted under the assault statute, Section 30-3-1 NMSA 1978.

AOC notes if SB182 is not enacted, threats against public officials will continue to be charged/prosecuted under current criminal laws which may not provide a mechanism to address all acts prohibited under this bill.

NE/al/sb